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In re Application of :
MINAMIO et al. :
Application No.: 09/380,312 :
PCT No.: PCT/JP98/02544 : DECISION ON PETITION
Int. Filing Date: 08 June 1998 :
Priority Date: 27 June 1997 :
Attorney Docket No.: JEL 30763PC :
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This is a decision on applicants' "Request for Corrected Filing Receipt" filed 13 February 2001 and (renewed) "Supplemental Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181 Based on Failure to Receive Office Action" filed on 22 February 2001.

On 21 September 2000, applicants filed "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181 Based on Failure to Receive Office Action or in the Alternative Petition Under 37 CFR 1.137(b)." In a decision dated 21 January 2001, the "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181" was dismissed without prejudice because applicants did not provide a copy of the docket record which purportedly shows where the Notification of Missing Requirements would have been entered had it been received. However, in the alternative, the "Petition Under 37 CFR 1.137(b)" was granted.

On 13 February 2001, applicants filed "Request for Corrected Filing Receipt."

On 22 February 2001, applicants filed "Supplemental Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181 Based on Failure to Receive Office Action."

DISCUSSION

A. Request for Correct Filing Receipt

The actual filing date of the present application is considered to be the international filing date, 08 June 1998. The date in the filing date portion on the filing receipt of a national stage application is the date upon which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. (See MPEP §1895.01) A review of

the application file reveals that the declaration was filed with the USPTO on 21 September 2000, the date which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. Therefore, the correction of the "FILING DATE" on the filing receipt to indicate a date of 31 August 1999 is not proper since applicant completed the requirements set forth in 35 U.S.C. 371(c) on 21 September 2000. (Note MPEP section 1893.03(b)). Therefore, the filing date will be changed to 21 September 2000.

B. Renewed Petition under 37 CFR 1.181

With regards to applicants' request that the holding of abandonment be withdrawn, a proper showing in order to establish that papers were not received as set forth in the Official Gazette at 1156 OG 53 must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement). The 12 January 2001 decision indicated that applicant satisfied requirements (1) and (2) above.

As to Item (3), applicants have submitted a docket record for all actions due on April 25, 2000. Applicants states that "the non-received office action would have been entered on this docket record had it been received. This docket record contains no item due for Application No. 09/380,312." Therefore, since applicant has satisfied Items (1), (2), and (3) above, the request may be properly granted.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.181 is GRANTED.

The decision mailed 12 January 2001 granting applicants' petition to revive under 37 CFR 1.137(b) is VACATED. Applicants' \$1210.00 petition fee under 37 CFR 1.17(m) will be refunded to Deposit Account No. 19-4375.

The application has an international filing date of 08 June 1998 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **21 September 2000**. The PTO database will be corrected to show a filing date of 21 September 2000.

This application is being returned to Art Unit 2811.



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